

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SAMINA THALER,)
)
 Plaintiff,)
)
 v.) CASE NO.:
) HON.:
)
 RUTH DOROCHOFF, District Director) FILED: JULY 31, 2008
of the United States Citizenship and Immigration) 08CV4356
Services, Department of) JUDGE LEINENWEBER
Homeland Security, EMILIO T. GONZALEZ,) MAGISTRATE JUDGE MASON
Director of the United States Citizenship and)
Immigration Services, and MICHAEL)
CHERTOFF, Secretary of the Department of)
Homeland Security,)
)
 Defendants.) AEE

COMPLAINT FOR WRIT OF MANDAMUS

Plaintiff, SAMINA THALER (hereinafter "Plaintiff"), by and through her attorney, Kevin Vodak, respectfully requests an order directing Defendants RUTH DOROCHOFF, EMILIO T. GONZALEZ and MICHAEL CHERTOFF (hereinafter "Defendants") to adjudicate Plaintiff's I-485 Application for Adjustment of Status as a Lawful Permanent Resident (hereinafter "I-485 Application") and issue Plaintiff a green card of permanent residency. In support of said request, Plaintiff states as follows:

JURISDICTION

1. This is a civil action brought pursuant to 28 U.S.C. §1331 and 5 U.S.C. §§ 701 et seq. to compel Defendants, officers of the United States to perform their duty owed to Plaintiff

under Section 245 of the Immigration and Nationality Act (hereinafter “INA”), codified at 8 U.S.C. §1255.

VENUE

2. Pursuant to 29 U.S.C. § 1391, venue is proper in this district on either of the following grounds: (1) the plaintiff resides in this judicial district, the defendants are officers of the United States or agencies of the United States, and no real property is involved (28 U.S.C. § 1391(e)(3)); and (2) acts or omissions giving rise to the action occurred in this judicial district, as this I-485 Application was processed in part by the Chicago office of the United States Citizenship and Immigration Services (28 U.S.C. § 1391(e)(2)).

PARTIES

3. Plaintiff entered the United States on an I-129F fiancé visa and is identified by A number 76-723-722. Plaintiff is a national of Pakistan and resides at 4445 W. Dunes Highway 12, Michigan City, IN 46360.

4. Defendant RUTH DOROCHOFF is the Director of USCIS for the Chicago District. As such, she is charged with the duty of administration and enforcement of all the functions, powers and duties of USCIS in the Chicago District.

5. Defendant EMILIO T. GONZALEZ is the Director of USCIS. As such, he is charged with the duty of administration and enforcement of all the functions, powers and duties of USCIS nationally.

6. Defendant MICHAEL CHERTOFF is being sued in his official capacity as the Secretary of the Department of Homeland Security (DHS). As of February 15, 2005, Mr. Chertoff has been responsible for the administration of USCIS, which provides certain immigration related services including naturalization. 8 U.S.C. § 1103.

FACTUAL BACKGROUND

7. On or about May 17, 2000, Plaintiff was admitted to the United States on an I-129F fiancé visa. See Exhibit A.
8. On or about August 11, 2000, Plaintiff filed an I-485 Application. See Exhibit B.
9. On or about November 18, 2002, Plaintiff was scheduled for an interview for her I-485 Application. The interview was scheduled on December 3, 2002. See Exhibit C.
10. On December 3, 2002, Plaintiff attended the interview for her I-485 Application and was issued a Request for Evidence. The Request for Evidence required Plaintiff to produce two color photographs, an I-864 Affidavit of Support, wedding photos and proof of any joint purchases or ownership, and an updated immunization supplement by an INS Certified Civil Surgeon. See Exhibit D.
11. Within 84 days of the Request for Evidence, Plaintiff produce the requested evidence as instructed.
12. On or about February 4, 2008, USCIS issued a memorandum entitled "Revised National Security Adjudication and Reporting Requirements." The memorandum states that where an I-485 Application is otherwise approvable, but has been pending a name check for over 180 days, "the adjudicator shall approve the I-485... and proceed with card issuance." See Exhibit E.
13. Plaintiff and her representatives have inquired about the status of her application on numerous occasions. Most recently, on April 18, 2008, Plaintiff's representatives inquired about her case. See Exhibit F.
14. On July 16, 2008, USCIS responded to the written April 18, 2008 inquiry. The response stated that "the processing of this case has been delayed because the required USCIS review is still in process." See Exhibit G.

15. Additionally, Plaintiff attended an infopass appointment on or about April 18, 2008 and was told by an immigration officer that her case was pending the background check.

16. Approximately eight years have passed since Plaintiff applied for an adjustment of status as a lawful permanent resident and approximately six years have passed since she was interviewed for her application.

17. But for the delay in the adjudication of Plaintiff's I-485 Application, Plaintiff would have been able to apply for citizenship. Additionally, because Plaintiff's children are derivatives of Plaintiff's application, she has been unable to secure permanent residency for her children, and her children have subsequently been unable to obtain financial aid for school.

Count I: Request for Adjudication of Plaintiff's I-485 Application Pursuant to the Mandamus

Act, 28 U.S.C. §1361

18. Plaintiff reasserts and realleges paragraphs 1-17 as if set forth fully herein.

19. Defendants owe a duty to the Plaintiff to adjudicate her I-485 Application in a timely manner.

20. Defendants have failed their duty to adjudicate Plaintiff's I-485 Application by refusing to make a decision on her application, despite its own policy of approving such cases subject to rescission if the pending name check produces information that would render an applicant ineligible.

21. Plaintiff has exhausted all administrative remedies by a) providing USCIS with all additional requested documents; and b) making numerous inquiries in writing and in person regarding her case.

22. Plaintiff's right to relief is within the zone of interest of 8 U.S.C. §1255.

**Count II: Request for Adjudication of Plaintiff's I-485 Application Pursuant to the
Administrative Procedures Act, 5 USC §§ 701 et seq.**

23. Plaintiff reasserts and realleges paragraphs 1-22 as if set forth fully herein.
24. Defendants have unlawfully withheld or unreasonably delayed the adjudication of Plaintiff's I-485 Application.

Prayer for Relief

WHEREFORE, Plaintiff SAMINA THALER respectfully requests that this Honorable Court:

- A. Order USCIS to issue a decision approving Plaintiff's I-485 Application;
- B. Grant attorney's fees and cost of court;
- C. Grant any other relief as this Honorable Court deems just and proper.

Respectfully submitted,

Kevin Vodak
Attorney for the Plaintiff

CAIR-Chicago
28 E. Jackson Blvd., Suite 1410
Chicago, IL 60604
Phone: 312-212-1520
Fax: 312-212-1530
Email: attorney@cairchicago.org

DATED: July 31, 2008



08CV4356

JUDGE LEINENWEBER
MAGISTRATE JUDGE MASON

Search



AEE

Services & Benefits

Immigration Forms

Laws & Regulations

About USCIS

Education & Resources

Press Room

Change Of Address

Receipt Number: LJN9725051216

Services While Your Case is Pending

Application Type: I129F, PETITION FOR FIANCE(E)

Current Status: Approval notice sent.

Civil Surgeons

On October 26, 1999, we mailed you a notice that we have approved this I129F PETITION FOR FIANCE(E). Please follow any instructions on the notice. If you move before you receive the notice, call customer service.

Case Status Online

You can choose to receive automatic case status updates, which will be sent via email. Please click [here](#) to create an account online.

Case Status Search

If you would like to see our current Processing Dates for Applications and Petitions, click [here](#).

Register

Note: Case Status is available for Applications and Petitions which were filed at USCIS Service Centers. If you filed at a USCIS Local Office, your case status may not be reviewable online but for processing times on forms filed at that Office please, [click here](#).

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 - 5283 or 1-800-767-1833 (TTY).

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04-04-2008 10:10 AM EDT

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[U.S. Department of Homeland Security](#)



Immigration & Naturalization Service JUDGE LEINENWEBER
10 West Jackson Boulevard MAGISTRATE JUDGE MASON
Chicago, Illinois 60604

AEE

08/14/00

Samina Thaler
4445 W. Dunes HWY
Michigan City, IN 46360

A 76 723752

Dear Applicant,

We have received your application for lawful permanent residence in the United States. Your receipt date is 08-11-00. We currently have approximately 18 months from receipt date to interview.

You will receive a notice for your fingerprints, and subsequently a letter for interview approximately two months prior to your appointment date. The appointment letter will advise you what is needed at the time of interview.

FURTHER:

- A) If you applied as a family, all members of the family must be present at the interview.
- B) If you are a diversity lottery winner, and do not receive an appointment for prints and interview one month after receipt of this letter, contact the office immediately, make a copy of this letter, and explain that you are a DV case and have not received your appointment for interview. Your adjustment must be completed before September 30th of the filing year.
- C) If you are filing as a child, under 21 years of age, and will reach your 21st birthday before the normal backlog period is reached, please notify this office IMMEDIATELY, in order that the application can be processed timely.

If you have filed for a work authorization card, you will receive an appointment letter for the initial card within 90 days. If you choose to file for employment authorization at a later date, you must submit the Form I-765. Request for work authorization by mail. Employment Authorization will not be issued on a walk-in basis. Please send the completed I-765 with proper fee to the following address:

U.S. Immigration and Naturalization Service
P.O. Box A3462, Chicago, Illinois 60690-3462
Attn: EAD

Since you have an application for adjustment pending and need to travel outside of the United States, you must file form I-131. Permission to travel is not an automatic grant. If at the time you file the application for residency, you were out of status or illegally in the United States for 6 months or longer, advance parole WILL NOT BE GRANTED. If the application is filed and you are denied, the filing fee is not refundable.

If you do not fall into either category B or C, please do not inquire about the status of your application prior to the backlog period mentioned. It will only further delay the processing time. Any ADDRESS CHANGES should be mailed with a copy of this letter to U.S. INS, P.O. Box A3462, Chicago, Illinois 60690-3462.

Sincerely,

Brian R. Perryman
District Director



JUDGE LEINENWEBER
MAGISTRATE JUDGE MASON

U.S. Department of Justice
Immigration and Naturalization Service

AEE

539 South LaSalle Street
Chicago, Illinois 60605

DATE: November 18, 2002
FILE NUMBER: A76723752

SANUBA TGAKER
4445 W. DUNES HWY.
MICHIGAN CITY, IN 40900
Examiner 8

APPOINTMENT NOTICE

You are scheduled for an interview on your application, I-485 to adjust status to that of lawfully admitted for permanent residence. Please appear at the INS Office, 230 South Dearborn Street, 2nd Floor, Chicago, IL on 12/03/2002 at 8:25:00 AM.

Please read this notice carefully and follow the instructions below:

- Comply with the attached "ADJUSTMENT INTERVIEW DOCUMENTARY REQUIREMENTS".
- Your petitioner must accompany you to the interview.
- You must bring evidence of your legal entry into the United States including your passport and form I-94. You and your petitioner must bring photo identification. If your petitioner is a Permanent Resident, he or she must bring their Alien Registration Card.
- If you do not speak English, an adult (other than a family member), who can act as an interpreter, must accompany you to the interview. If you require a sign language interpreter please notify us immediately at TDD (312) 385-1813.

Failure to appear for the scheduled interview will be deemed an abandonment of the application and will result in a denial of the application pursuant to 8 CFR 103.2(h)(13). Also, failure to bring the documents requested of you as indicated on the attached "Adjustment Interview Documentary Requirements" may result in denial of the application due to lack of prosecution.

Sincerely,

Brian R. Perryman
District Director

CC: LAWRENCE SHARP
4433 BROADWAY
GARY, IN 46409



08CV4356

JUDGE LEINENWEBER

MAGISTRATE JUDGE MASON

U.S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

AEE

Customer Service
10 W. Jackson
Chicago, IL 60604

Samina Thaler
 4445 W. Dunes Hwy.
 Michigan City, IN 40900

December 3, 2002

A76723752

REQUEST FOR EVIDENCE

The documentation submitted during the adjustment interview is not sufficient to warrant a favorable consideration of your petition/application. The following information is also required:

PLEASE SEE FOLLOWING SHEET

Your response must be received in this Office no later than 84 days from the date indicated above. Your case is being held in this office pending your response, however you are encouraged to submit the evidence without delay so as to complete your case. Within this period you may:

1. Submit all of the evidence requested;
2. Submit some or none of the evidence requested and ask for a decision based on the record; or
3. Withdraw the application or petition. (It is noted that if you request that the application or petition be withdrawn, the filing fee cannot be refunded).

You must submit all of the evidence at one time. Submission of only part of the evidence requested will be considered a request for a decision based upon the record (#2 Above). No extension of the period allowed to submit evidence will be granted. If the evidence submitted does not establish that your case was approvable at the time it was filed, it can be denied.

If you do not respond to this request with the time allowed, your case will be considered abandoned and denied due to lack of prosecution. Evidence received in this office after the due date may not be considered.

PLACE THIS LETTER ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THIS LETTER WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL.

Please submit all documents to the attention of:

OFFICER C. VENTURA
 INS Customer Service
 10 W. Jackson
 Chicago, IL 60604

Sincerely,

Brian R. Perryman
 District Director



**U.S. Department of Justice
Immigration and Naturalization Service
Customer Service
10 W. Jackson
Chicago, IL 60604**

PLEASE RETURN THIS LETTER WITH YOUR RESPONSE TO

ATTN: OFFICER VENTURA

Name: Samina Thaler

File Number: A76723752

PLEASE COMPLY WITH THE BELOW CHECKED INSTRUCTIONS

- 1. Please complete the blocks on your enclosed application/petition/form, which are highlighted.
- 2. Furnish the required fee of \$_____ for Form_____.
- 3. A foreign document must be accompanied by a translation in English. The translator must certify that he/she is competent to translate and that the translation is accurate.
- 4. Furnish the date and port of each of your entries into the United States and the name of the ship, plane, or other vehicle on which you traveled or provide a sworn statement of how you entered the United States.
- 5. Furnish two (2) color photographs. These photos must have a white background, photos must be glossy, unretouched, and not mounted. Dimension of the facial image should be about 1 inch from the chin to top of hair or head, shown in 3/4 frontal view of right side of face with right ear visible.
- 6. I-864 Affidavit of Support (enclosed) and last three years of tax returns, W2s and a job letter for Sponsor and/or Joint Sponsor. This form must be completely filled out and notarized. Failure to follow the directions and complete this form accurately may result in denial of your application.
- 7. You must provide a sworn statement for each and every arrest and for charges against you including the dates and places. You must provide certified court dispositions (not police reports) for each and every arrest and charge (see below).
- 8. Your case is continued for your fingerprints to clear.
- 9. Your case is continued because you need to submit new fingerprints. (See attached fingerprint referral letter).
- 10. Submit medical exam (Form I-693) and immunization supplement form from an INS Certified Civil Surgeon. These documents must be in a sealed envelope from the doctor.
- 11. Please submit the following types of evidence to support the claimed relationship:
 - a. Birth Certificates for beneficiary and petitioner
 - b. Official Marriage Certificate
 - c. Proof of termination of previous marriages, such as divorce decrees and death certificates.
 - d. Wedding photos and other photos of you and your spouse together during your entire relationship.
 - e. Proof of any joint purchases or ownership, such as TV, furniture, car, house, etc.
 - f. Proof of joint credit established since marriage, such as joint credit cards, loans, etc.
 - g. Proofs of actual shared residence such as lease agreements, property deeds or mortgages, etc. If you have none of the above, provide a notarized affidavit from your current landlord.
 - h. Proof of bank statements for checking and/or savings accounts and canceled checks throughout your marriage.
 - i. IRS Federal Tax Returns with W2s for years _____.
 - j. Proof of medical, life and auto insurance during your marriage.
 - k. Proof of utility bills for a shared residence, such as telephone, electric, gas, etc. You should provide statements that cover the duration of your marriage.
- 12. Other: Update immunization supplement by INS Certified Civil Surgeon.

PLEASE RETURN THIS LETTER AND ALL ATTACHMENTS WITH YOUR RESPONSE

08CV4356

JUDGE LEINENWEBER
MAGISTRATE JUDGE MASON

AEE

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Domestic Operations of Directorate
Washington, DC 20529U.S. Citizenship
and Immigration
Services

FEB 4 - 2008

HQ 70/23 & 70/28.1

Interoffice Memorandum

TO: Field Leadership

FROM: Michael Aytes
Associate Director, Domestic Operations

SUBJECT: Revised National Security Adjudication and Reporting Requirements

Background

U.S. Citizenship and Immigration Services (USCIS) conducts background checks on all applicants, petitioners, and beneficiaries seeking immigration benefits. This is done both to enhance national security and to ensure the integrity of the immigration process. USCIS has previously mandated that FBI name checks be completed and resolved before any positive adjudication can proceed on certain form types. This memorandum modifies existing guidance for applications where statutory immigration provisions allow for the detention and removal of an alien who is the subject of actionable information that is received from the FBI or other law enforcement agencies after approval of the application.

USCIS is issuing revised guidance in response to recommendations of the DHS Office of Inspector General (OIG-06-06) regarding the need to align the agency's background and security check policies with those of U.S. Immigration and Customs Enforcement (ICE). The *Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals* regulations prevent immigration judges and the Board of Immigration Appeals (BIA) from granting benefits to aliens before DHS confirms that all background and security checks have been completed. See 8 C.F.R. § 1003.47(g); 8 C.F.R. § 1003.1(d)(6)(i). In the context of removal proceedings, ICE has determined that FBI fingerprint checks and Interagency Border Inspection Services (IBIS) checks are the required security checks for purposes of the applicable regulations. In the unlikely event that FBI name checks reveal actionable information after the immigration judge grants an alien permanent resident status, DHS may detain and initiate removal proceedings against the permanent resident. See 8 U.S.C. § 1227; *see also* 8 U.S.C. § 1256 (allowing DHS to rescind an alien's adjustment of status).

www.uscis.gov

Plaintiff's Exhibit E

AR CIS 0101

Revised National Security Adjudication and Reporting Requirements
Page 2

Revised Guidance

A definitive FBI fingerprint check and the IBIS check must be obtained and resolved before an Application for Adjustment of Status (I-485), Application for Waiver of Ground of Inadmissibility (I-601), Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (I-687), or Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603) (I-698) is approved. USCIS will continue to initiate FBI name checks when those applications are received. Where the application is otherwise approvable and the FBI name check request has been pending for more than 180 days, the adjudicator shall approve the I-485, I-601, I-687, or I-698 and proceed with card issuance. The FBI has committed to providing FBI name check results within this timeframe.

There is no change in the requirement that FBI fingerprint check, IBIS check and FBI name check results be obtained and resolved prior to the adjudication of an Application for Naturalization (N-400).

Pending further guidance regarding post-audit reporting and tracking requirements and modifications to associated quality assurance procedures, applications approved pursuant to this memorandum shall be held at the adjudicating office. If derogatory or adverse information is received from the FBI after the application is approved, USCIS will determine if rescission or removal proceedings are appropriate and warranted.

Subject to the reporting requirements set forth in the February 16, 2007, memorandum titled "FBI Name Checks Policy and Process Clarification for Domestic Operations," an application or petition may be denied, dismissed, administratively closed, withdrawn, or referred to the Immigration Court at any time.

Questions regarding this memorandum should be directed through appropriate supervisory and operational channels. Local offices should work through their chain of command.

Distribution List:

Regional Directors

Service Center Directors

District Directors (except foreign)

Field Officer Directors (except foreign)

National Benefits Center Director

AEE Christina Abraham

From: Christina Abraham [civilrights@cairchicago.org]
Sent: Friday, April 18, 2008 11:57 AM
To: 'CAO PILOT'
Subject: AILA Inquiry
Attachments: Samina Thaler G-28.PDF

Re: Thaler, Samina – A 76-723-722

To Whom It May Concern:

I am writing in regards to one of our clients, Samina Thaler, A 76-723-722. Ms. Thaler submitted an application for permanent residency in August 8, 2000 and has consistently been told that her application is pending a background check. Pursuant to the new USCIS policy regarding permanent residency applications, applicants who otherwise meet all of the requirements but whose background checks remain pending for more 180 days should be approved and should be issued their cards (see USCIS interoffice memorandum dated 2/4/2008).

Today, Ms. Thaler attended an infopass appointment, where she was told that her application was still pending a background check. We would like to confirm the status of Ms. Thaler's application. If it is not confirmed to us, in writing, that her application will be adjudicated immediately, Ms. Thaler will file a mandamus in federal court.

Attached is a G-28 authorizing our representation of Ms. Thaler. If you have any questions, please contact me. I look forward to your prompt response.

Sincerely,

Christina Abraham
Civil Rights Director
Council on American-Islamic Relations (CAIR)-Illinois
28 East Jackson Boulevard
Suite 1410
Chicago, IL 60604
Tel: 312-212-1520
Fax: 312-212-1530
E-mail: cabraham@cair.com
www.cairchicago.org

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Plaintiff's Exhibit F

JUDGE LEINENWEBER

MAGISTRATE JUDGE MASON

AEE **Christina Abraham**

From: CAO PILOT [cao.pilot@dhs.gov]
Sent: Wednesday, July 16, 2008 2:09 PM
To: Christina Abraham
Subject: RE: AILA Inquiry
Attachments: CHI 780236 FDNS Standard Ltr.doc

Please see attached response.

Customer Assistance Office
U.S. Citizenship and Immigration Services
Washington, DC Headquarters

From: Christina Abraham [mailto:civilrights@cairchicago.org]
Sent: Friday, April 18, 2008 12:57 PM
To: 'CAO PILOT'
Subject: AILA Inquiry

Re: Thaler, Samina – A 76-723-722

To Whom It May Concern:

I am writing in regards to one of our clients, Samina Thaler, A 76-723-722. Ms. Thaler submitted an application for permanent residency in August 8, 2000 and has consistently been told that her application is pending a background check. Pursuant to the new USCIS policy regarding permanent residency applications, applicants who otherwise meet all of the requirements but whose background checks remain pending for more 180 days should be approved and should be issued their cards (see USCIS interoffice memorandum dated 2/4/2008).

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Attached is a G-28 authorizing our representation of Ms. Thaler. If you have any questions, please contact me. I look forward to your prompt response.

Sincerely,

Christina Abraham
Civil Rights Director
Council on American-Islamic Relations (CAIR)-Illinois
28 East Jackson Boulevard
Suite 1410
Chicago, IL 60604
Tel: 312-212-1520
Fax: 312-212-1530
E-mail: cabraham@cair.com
www.cairchicago.org

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Plaintiff's Exhibit G



**U.S. Citizenship
and Immigration
Services**

HQCIS 181/48.2-C

Ms. Christina Abraham
Civil Rights Director
Council on American-Islamic Relations
28 East Jackson Boulevard, Suite 1410
Chicago, IL 60604

RE: Samina Thaler

Dear Ms. Abraham:

Thank you for your email dated April 18, 2008 to the U.S. Citizenship and Immigration Services (USCIS). The following response is provided for your information/action.

We regret the length of time it has taken to process your client's Form I-485, Application to Register Permanent Residency or Adjust Status. A search of our records reflects that the processing of this case has been delayed because the required USCIS review is still in process. Until this required review is completed, we cannot move forward on the case.

Please understand that the review is part of the process in adjudicating cases of similar nature. While an exact date for completion of the review cannot be given at this time, we will make every effort to make a decision on this case as soon as the review is completed.

We appreciate your continued patience and understanding. If you need additional assistance or filing instructions, we invite you to contact the USCIS National Customer Service Center at 1-800-375-5283 or visit our web site at www.uscis.gov.

Sincerely,

Paul Onyango, Acting Supervisor
Customer Assistance Office

ls

CHI 780236

Plaintiff's Exhibit G

www.uscis.gov